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THE FOOTHILL-DE ANZA COMMUNITY
COLLEGE DISTRICT, DE ANZA COMMUNITY
COLLEGE, LEE LAMBERT, LLOYD A.
HOLMES, PATRICK AHRENS, LAURA CASAS,
PEARL CHENG, PETER LANDSBERGER,
GILBERT WONG AND ALICIA CORTEZ,
THOMAS RAY, CHRISTINA ESPINOSA-PIEB,
and LYDIA HEARN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TABIA LEE,

Plaintiff,

vs.

THE FOOTHILL-DE ANZA
COMMUNITY COLLEGE DISTRICT,
DE ANZA COLLEGE, PATRICK J.
AHRENS, LAURA CASAS, PEARL
CHENG, PETER LANDSBERGER, LEE
LAMBERT, and GILBERT WONG, in
their official capacities; CHRISTINA
ESPINOSA-PIEB, in her official and
individual capacities; ALICIA CORTEZ,
LYDIA HEARN, LLOYD A. HOLMES,
and THOMAS RAY, in their individual
capacities,

Defendants.

Case No. 5:23-cv-03418-PCP

**DEFENDANTS' REQUEST FOR
JUDICIAL NOTICE**

Date: October 3, 2024
Time: 10:00 a.m.
Judge: Hon. P. Casey Pitts
Courtroom: 8

TO THE COURT, PLAINTIFF, AND HER ATTORNEYS OF RECORD:

REQUEST FOR JUDICIAL NOTICE

Defendants The Foothill-De Anza Community College District, De Anza Community College, Lloyd A. Holmes, Patrick Ahrens, Laura Casas, Pearl Cheng, Peter Landsberger, Lee Lambert, Gilbert Wong, Alicia Cortez, Thomas Ray, Christina Espinosa-Pieb, and Lydia Hearn (collectively, “Defendants”) respectfully request that the Court take judicial notice of the documents attached to the Declaration of Jayne Benz Chipman (“Chipman Declaration”) as Exhibits 1 through 6.

- Attached hereto as Exhibit 1 is a true and correct copy of the Job Description for the Director of the Office of Equity, Social Justice, and Multicultural Education, referenced in the Second Amended Complaint at ¶ 30.
- Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff’s “Tabia Lee, EdD Report to De Anza College Academic Senate November 29, 2021,” referenced in the Second Amended Complaint at ¶¶ 103, 104.
- Attached hereto as Exhibit 3 is a true and correct copy of a November 16, 2021 email exchange between Plaintiff and the De Anza College Institutional Research and Planning Chair, Mallory Newell, Ed.D., referenced in the Second Amended Complaint at ¶¶ 87, 88.
- Attached hereto as Exhibit 4 is a true and correct copy of the February 23, 2023 Notice of Non-Renewal letter to Tabia Lee.
- Attached hereto as Exhibit 5 is a true and correct copy of a December 6, 2022 letter posted on the District’s website referenced in the Second Amended Complaint at ¶ 171.
- Attached hereto as Exhibit 6 is a true and correct copy of the Notice of Case Closure and Right to Sue letter with attachment that Plaintiff’s legal counsel provided to Defense counsel on September 18, 2023.

This request is made pursuant to Rule 201 of the Federal Rules of Evidence and the

authorities cited below. This request is made in support of Defendants' Motion to Dismiss the Second Amended Complaint filed by Plaintiff Tabia Lee.

BASIS FOR REQUESTING JUDICIAL NOTICE

On a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court may "consider certain materials – documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice – without converting the motion to dismiss into a motion for summary judgment." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

Plaintiff's Second Amended Complaint ("SAC") explicitly references the alleged contents of the following documents but does not attach a copy of the document:

- Job Description for the Director of the Office of Equity, Social Justice, and Multicultural Education, referenced in the Second Amended Complaint at ¶ 30;
- "Tabia Lee, EdD Report to De Anza College Academic Senate November 29, 2021," referenced in the Second Amended Complaint at ¶¶ 103, 104;
- November 16, 2021 email exchange between Plaintiff and the De Anza College Institutional Research and Planning Chair, Mallory Newell, Ed.D., referenced in the Second Amended Complaint at ¶¶ 87, 88;
- February 23, 2023 Notice of Non-Renewal letter to Tabia Lee;
- December 6, 2022 letter posted on the District's website referenced in the Second Amended Complaint at ¶ 17; and
- Plaintiff's September 14, 2023 Notice of Case Closure and Right to Sue letter from the California Civil Rights Department is explicitly referenced in the Second Amended Complaint at ¶ 303.

Under the incorporation by reference doctrine, "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled in part on other grounds*, *Galbraith v. Cty. Of Santa Clara*, 307 F.3d 1119, 1123-24 (9th Cir. 2002). A "defendant may offer such a

document, and the district court may treat such a document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).” *Ritchie*, 342 F.3d at 908. Because the documents in Exhibits 1 through 6, serve as a basis for Plaintiff’s allegations the Court may consider them in connection with Defendants’ concurrently filed motion to dismiss. Additionally, the Court may take judicial notice of these documents as a fact that is not subject to reasonable dispute because it “can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned.” Fed. R. Evid. 201(b).

Dated: June 14, 2024

PLAZA DE JENNINGS & CHIPMAN LLP

By: Jayne B. Chipman
Carmen Plaza de Jennings
Jayne Benz Chipman

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